



CANNON BUILDING
861 SILVER LAKE BLVD., SUITE 203
DOVER, DELAWARE 19904-2467

STATE OF DELAWARE
DEPARTMENT OF STATE
DIVISION OF PROFESSIONAL REGULATION

TELEPHONE: (302) 744-4500
FAX: (302) 739-2711
WEBSITE: WWW.DPR.DELAWARE.GOV

PUBLIC MEETING MINUTES:	COUNCIL ON REAL ESTATE APPRAISERS
MEETING DATE AND TIME:	Tuesday, April 17, 2012 at 9:30 a.m.
PLACE:	861 Silver Lake Boulevard, Dover, Delaware Conference Room A , 2nd floor of the Cannon Building
MINUTES APPROVED:	May 15, 2012

Members Present

William Diveley, Chair, Professional Member
Brad Levering, Professional Member
Richard Wheeler, Public Member
Frank Long, Public Member
Ronald Mandato, Vice Chair, Professional Member
Gary V. Parker, Professional Member
Frank Smith, Public Member
Yvonne Rickards, Public Banking Member
Georgianna Trietley, Professional Member

Division Staff/Deputy Attorney General

Patricia Davis-Oliva, Deputy Attorney General
Nicole Williams, Administrative Specialist II

Members Absent

None

Others Present

David Cherner
Martha Diveley
Frank Szczuka

Call to Order

Mr. Diveley called the meeting to order at 9:36 a.m. and introduced and welcomed Ms. Georgianna Trietley as the newest professional member to the Council.

Review and Approval of Minutes

The Council reviewed the minutes from the March 20, 2012 meeting. Mr. Wheeler made a motion to accept the minutes as submitted, seconded by Mr. Smith. Motion carried unanimously.

Unfinished Business

Tabled: Discussion on Statute and Regulation Language for Inactives and Reactivation

The Council tabled this discussion until the May meeting. Ms. Williams will add this discussion item to the May agenda.

19-03-12 – Mr. Diveley advised that this complaint was dismissed by the Division.

New Business

New Complaints

19-05-12 – Complaint assigned to Ms. Trietley.

Review of Application for Exemption Pursuant to Rule 4.2.3: William Salus

Mr. Diveley reviewed the request and made a motion to accept the application for exemption for Mr. Salus, seconded by Mr. Parker. Motion carried unanimously.

Ratification of Issued Licenses

Mr. Mandato made a motion to ratify the Certified General Real Property Appraiser license issued to David Masters, seconded by Mr. Parker. Motion carried unanimously.

Ratification of Approved Continuing Education Activities

Mr. Parker made a motion to ratify the approved education activities listing, seconded by Mr. Mandato. Motion carried unanimously.

Review of Temp Applications for discussion only

Mr. Diveley read the list of names approved for temporary permits. There was no discussion by the Council.

Discussion of Dismissed Complaints

Mr. Parker stated that he brought the topic to the Council at the last meeting and wanted to further discuss the matter. He stated that the Deputy Attorney General, "DAG", responsible for prosecuting complaints has the discretion to dismiss complaints without any input from the Council. Furthermore, Mr. Parker expressed his concern especially when complaints where USPAP violations are evident are dismissed; and the Council contact person for the complaint is not automatically notified. When the case is dismissed by the DAG the council cannot do anything further regarding the complaint. Mr. Parker stated that he believes there should be some recourse in a particular case where the Council can request that some type of disciplinary action be taken when USPAP violations are evident in the complaint. Mr. Parker inquired if there was something from a protocol standpoint that the Council could do once the complaint is dismissed. Ms. Davis-Oliva responded that there is nothing the Council can do to circumvent the prosecutorial discretion; however the contact person should be contacted before the complaint is dismissed. Mr. Diveley stated that the Council is not looking to circumvent the DAG's decision but rather to supplement the Council's decision that the complaint should not be dismissed. Mr. Parker added that the licensee or respondent has the choice to appeal the Council's decision however the Council does not have any type of appeal option to the DAG's decision when they feel that there is definite merit to the complaint. Mr. Parker advised that he has seven pending complaints in which he is the contact person and has not been contacted

about any of them. Ms. Davis-Oliva inquired if any of the Council members have been contacted by the AG's office for any of their assigned complaints. All Council members who have assigned complaints replied that they have not been contacted by the AG's office except Mr. Mandato who has been contacted once by the AG's office with approximately 20 open active cases. Ms. Trietley and Mr. Diveley inquired if the Council could request that the AG's office contact the contact person during the complaint process periodically. Ms. Davis-Oliva stated that she can draft a letter on behalf of the Council to Mr. Collins regarding the Council's frustration with the complaint process on the part of the AG's office. Ms. Trietley inquired as to why the AG's office does not contact the actual contact person assigned to the complaint before the complaint is dismissed. Mr. Parker stated that at least before the case is dismissed, the AG's office should definitely contact the board member assigned to the complaint. Mr. Levering stated that before the complaint is closed by the Division the Division's investigator will keep the contact person in the loop with a letter stating that the case is closed although the Council does not know why the matter was dismissed. Mr. Wheeler stated that the letter of notification is an after the fact and the assigned contact person did not provide any input in the matter prior to that dismissal. Mr. Parker inquired if there was an appeal for the Council of the AG's decision to not prosecute the case. Ms. Davis-Oliva stated that the Council does not have any type of legal appeal to the AG's decision. Ms. Trietley stated that there should be some type of ethical standard to require that the DAG contact the assigned contact person before the complaint is dismissed. Mr. Mandato replied that the investigator has to contact the assigned contact person before dismissing the complaint. Mr. Diveley stated to have Ms. Davis-Oliva draft a letter on behalf of the Council directed to the AG's office and Mr. Collins and the Council will review the letter at their next meeting.

Discussion of Adding to Statute "Dishonest Non-Appraisal Behavior by Licensees"

Mr. Parker stated that there seems to be another loophole and is not sure if the Council should get into attempting to regulate the morals of licensees since they are regulated based on USPAP. There is nothing in USPAP that says if you are doing non-appraisal assignment unethical activity we can charge them with a disciplinary action; it has to be an appraisal assignment. Ms. Davis-Oliva stated for example if there was a complaint filed against an appraiser that falsified information on his tax returns and was not criminally prosecuted then the Council would have a situation where a licensee has committed a dishonest act and is very hard to define as a disciplinable offense in the current Statute. Mr. Parker advised that currently there is only the introduction section to USPAP regarding ethics. Ms. Davis-Oliva clarified that the ethical section in the USPAP introduction clearly limits itself to the conduct of appraisers while they are conducting an appraisal. If the Council had a situation where a licensee engaged in a dishonest act in a different context the question before the Council would be if that type of action would be considered a disciplinable offense because in the profession honesty is very important in that it requires subjective decisions. Ms. Davis-Oliva stated that given the current language of the statute it would be difficult to include language regarding dishonest acts by appraisers. Mr. Parker stated that unless there was a criminal conviction of dishonestly, such as fraud then the action could be disciplined, Ms. Davis-Oliva concurred. There was no further discussion.

Discussion on Adding a Licensed Assessor to the Council or Specifying the Requirement of one Professional Member Be a Licensed Assessor

Mr. Parker stated that his thought was that a Licensed Assessor member be added to the Council as a requirement. Mr. Levering concurred. Mr. Parker inquired if the Council has time to put in another bill. Ms. Davis-Oliva agreed with Mr. Levering and stated that it is best that the Council draft a bill for the next session and wait to see if the current bill to take the statutory authority for licensing assessors away from the Council. If bill to remove statutory authority from

the Council does not go through then Ms. Davis-Oliva will draft a bill to add a Licensed Assessor to the Council for the next session.

Discussion with David Cherner on Proposed Appraisal Management Companies (AMC) Legislation

The Council opened the floor to Mr. David Cherner, Legislative Director for Rels Valuation based out of Bloomington, MN. Mr. Cherner addressed the Council regarding the Council's proposed AMC legislation that was drafted in early April. Mr. Cherner had the opportunity to discuss the drafted legislation with Mr. Mandato and Ms. Davis-Oliva. Ms. Davis-Oliva stated that the AMC legislation has been submitted but not yet introduced. Mr. Cherner stated his attendance was to address the Council to provide highlights of his company's concerns to the Council's current AMC bill and to assist the Council in all ways with the new legislation. He stated that they are not opposed to the AMC legislation which is mandated by the Dodd-Frank Act as there are many states that have enacted AMC legislation. Additionally Mr. Cherner is present on behalf of Real Estate Valuation Advocacy Agency, REVAA, based out of Washington D.C. and is a trade association of AMCs in which he is also a member.

Mr. Cherner stated that he is presenting some ideas to the Council to clean up language or make the current language explicitly clearer. The first topic of consideration was to add a seat on the Council for a representative of an AMC to provide input and perspective as the Council moves forward with implementing AMC regulations. Ms. Davis-Oliva inquired as to how many states currently have an AMC representative on their Appraisal Board. Mr. Cherner did not have that information but will gather that information and forward to the Council and Ms. Davis-Oliva. Mr. Mandato stated that the current statute requires that a member on the Council be a Delaware resident. Mr. Cherner responded this was discussed by Rels Valuation and that their goal is to have an AMC representative that does not have to be a resident of Delaware.

Mr. Cherner stated that Rels next topic for discussion was to clarify the definition of appraisal management services in the proposed bill. Rels propose to expand that definition to incorporate some of the other functions that an AMC might undertake, for example quality control review of all appraisals that are submitted. Mr. Mandato stated that one of the roles of the AMC is to review the quality of the appraisals before they are submitted to the lender and if any quality assurance issues were to come back they would come back to the appraiser through the AMC. Mr. Mandato inquired if that would encompass the quality control review. Mr. Cherner replied that it would, but their thought is to make it explicitly clear in the definition of those services that another function is the quality control aspect although quality control does play a role in the broader scheme of appraisal management services. Ms. Davis-Oliva printed out copies of the bill for the Council to review.

The Council took a ten minute break to review the bill. The Council reconvened at 10:27 a.m.

Mr. Cherner asked that the Council consider defining a maximum cap for the registration fee in the statute. With respect to section 4021 (b)(3) regarding the disclosure of interested persons that may have ownership stake in the AMC Rels proposes a change only to require the disclosure of those persons that have at least ten percent ownership in the AMC; however the challenge is when companies may have multiple ownerships through joint ventures or other business relationships and the disclosure would be a very large number of people. The intent is to get all the names of the significantly interested parties to the Council and put a percent on disclosures. Mr. Wheeler inquired about the language stating ownership being a principal, partner, officer, director, or trustee as those titles do not appear to be a casual owner in the AMC. Mr. Diveley clarified that Mr. Cherner is asking that the language be more specific. Mr.

Cherner additionally clarified by suggesting that the Council make the language more specific regarding the disclosure list for about ten percent of those that have an interest in the AMC. Ms. Davis-Oliva state that she will look into the Board of Pharmacy, as they certify wholesale companies, statue regarding their language requiring disclosure of officers so that the Council's language is in line with the Title. Mr. Cherner stated that he can provide a copy of other State's disclosure requirements as well.

Mr. Cherner requested the Council to review section 4021 (b) (5-8) which is the certification process that AMCs would need to comply with when obtaining a registration. He highlighted the use of the term insured although it is not a substantive change, but simply wanted to clarify that as an AMC, particularly under number eight of section 4021 (b), has policies and procedures in place to ensure that staff has training in USPAP and appraisers are properly competent in complying with federal and state law and regulations. Rels is requesting that some of the language be changed to verify as a way to maintain the intent of the Council and to add a certification that an AMC is in compliance with the Truth and Lending Act and amendments to the Truth and Lending Acting requiring independence of appraisers.

Pertaining to section 4022, Mr. Cherner suggested the clarification of language that speaks of federally managed institutions, such as banks.

Pertaining to section 4024, Mr. Cherner suggested clarifying that only those owners that has a ten percent or more stake/interest in the company have to comply with those requirements. Additionally in regards to subsection b(3), it was suggested that the Council not adopt language that states that an AMC cannot get a registration of they have had a license revoked unless that license was subsequently granted or reinstated. Ms. Davis-Oliva stated that revocation is a reason for proposal to deny but the Council has the authority to waive that disqualification of revocation. This language gives Council the discreton to waive this disqualification or not.

Under section 4026, Mr. Cherner recommended the Council differentiate in the requirement between those employees who have the option to select independent appraisers and those who perform appraisals in that they receive appropriate training regarding USPAP but those employees do not need the same type of training or qualifications as an independent appraiser.

Under section 4029, disclosure of fees, Mr. Cherner brought this topic to the Council for discussion only and stated suggested that disclosure of fees be prohibited. Regarding the prohibitions, Mr. Cherner provided the Council with a few clarification points, one being to add language about a good cause for breach of contract or standards of service.

Regarding section 4030(c), Mr. Cherner recommended the Council add a third item about considering additional property information.

Under section 4032, Mr. Cherner suggested clarification and to include an exception that an AMC cannot modify a report unless the appraiser has consented to such in writing. However the Council were opposed to the suggest modification.

Under section 4033 regarding adjudication of disputes subsection (c), Mr. Cherner suggested adding a specific time period, such as 60 days, in which the Council has to adjudicate a complaint filed to provide clarification as to when the Council has adjudicated the complaint. Ms. Davis-Oliva advised that the Council has considered the suggestion but will not be able to accommodate that change as the complaint is out of the Council hands because it has to go through the investigative department then through the Attorney General's office and on to a

hearing if the complaint is substantiated. There was no further discussion on that specific section.

Mr. Cherner stated that under subsection (d) of 4033 regarding the Council having authority to mandate that a member to the panel be added back to the appraiser panel is unreasonable as AMCs take violations of USPAP very seriously. Ms. Davis-Oliva clarified that Mr. Cherner is stating that if an appraiser panel finds that an appraiser has violated any provisions of the law, USPAP, or this Chapter and is removed from the panel and the Council after a hearing finds that the appraiser was not in violation that the Council should not have the authority to order the appraiser be added back on to the panel. Mr. Cherner concurred although he provided some additional clarification of the AMCs suggested intent.

Under section 4034 Enforcement, Mr. Cherner suggested clarifying the language to include stating “any material violation of the Chapter in order for the Council to be able to revoke a registration” as part of this subsection.

Lastly, Mr. Cherner made reference to the effective date of the proposed AMC legislation as to when the Council and Division will establish an effective date for registering. He proposed language to state that a grace period of at least four months, 120 days, be given if at the time of the effective date of the law there is no registration process developed to allow AMCs time to become into compliance. Mr. Cherner thanked the Council for allowing him to attend and speak on behalf of Rels and REVA.

Mr. Parker requested clarification regarding the appraisal review section 4002 regarding a State licensed Delaware review appraiser. Mr. Cherner clarified that their intent is that the person not be a Delaware licensed appraiser, but rather a licensed certified appraiser. Ms. Davis-Oliva stated that the question is whether reviewing a Delaware appraisal constitutes practicing appraising in the State of Delaware. Mr. Parker stated that the statute allows for review where no license is needed if no professional judgment is given and is only a clerical process. Mr. Cherner stated that he sees no issue with discussing this matter in more detail as well.

Mr. Parker additionally requested clarification regarding section 4029 disclosure of fees inquiring if it is a USPAP requirement to disclose any fees associated with an appraisal assignment. Ms. Davis-Oliva clarified that the current written proposed statute states that an AMC cannot prohibit the appraiser from disclosing fee on the appraisal report and there was no opposition from Mr. Cherner regarding that section.

Other Business before the Council (for discussion only)

There was no other business before the Council.

Public Comment

Frank Szczuka addressed the Council inquiring about an issue within New Castle County regarding affordable development and workforce housing. He addressed the Real Estate Commission (REC) recently to determine if they made a ruling on who gets informed if it is workforce housings or affordable development. The REC was uncertain of the language on their seller's disclosure form regarding if a person is aware of any workforce or affordable development housing in the community. His question for the Council pertained to how does affordable and workforce housing affect the prices in communities. Mr. Diveley clarified in stating that Mr. Szczuka is asking how the workforce housing development affects the value in the non-workforce housing. The Council determined that it rests within the property rights.

Next Meeting

The next meeting is scheduled for May 15, 2012 at 9:30 a.m. in Conference Room A second floor, Cannon Building, 861 Silver Lake Boulevard, Dover, Delaware.

Adjournment

Mr. Mandato made a motion, seconded by Ms. Trietley to adjourn the meeting. There being no further business before the Council, the meeting adjourned at 11:24 a.m.

Respectfully submitted,

A handwritten signature in cursive script that reads "Nicole M. Williams".

Nicole M. Williams
Administrative Specialist II